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In the Supreme Court of the United States

CTS CORPORATION, PETITIONER

v.

PETER WALDBURGER, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, providing a federal commencement date for the running of state statutes of limitations as applied to suits involving hazardous substances, 42 U.S.C. 9658, preempts a North Carolina statute cutting off liability ten years after a defendant's last relevant act or omission.

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INTEREST OF THE UNITED STATES

The question presented is whether a provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9658, affects the operation of a North Carolina state statute cutting off substantive liability ten years after a defendant's last relevant act or omission in a case involving injury allegedly caused by hazardous substances. The United States has a substantial interest in the proper resolution of this question.

Although the United States may not be sued directly under state law, the substantive restrictions on liability under state law, such as that in the North Carolina statute, apply to claims against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 *et seq.* See 28 U.S.C. 1346(b)(1), 2674

(limiting the United States' liability to circumstances in which a private person would be liable under state law); *Anderson* v. *United States*, 669 F.3d 161, 164-165 (4th Cir. 2011). To the extent that CERCLA is held to preempt statutes like North Carolina's, those statutes would therefore also be unavailable to the United States in negligence actions under the FTCA that involve alleged exposure to hazardous substances.

The United States has a particular interest in the interaction of CERCLA with the North Carolina statute because of ongoing litigation against the United States under the FTCA involving allegations of contaminated drinking water at the Camp Lejeune Marine Corps Base in North Carolina. The multi-district litigation panel has consolidated pretrial proceedings in those cases in the Northern District of Georgia, and the question presented in this case is currently pending before the Eleventh Circuit in connection with those proceedings. See *Bryant* v. *United States*, No. 12-15424.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-4a.

STATEMENT

1. a. North Carolina law establishes a three-year statute of limitations for a variety of contract and tort claims. N.C. Gen. Stat. § 1-52 (2011). That provision contains a discovery rule of accrual, under which a cause of action for "personal injury or physical damage to claimant's property shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs." *Id.* § 1-52(16). The application of this

statute of limitations is not directly at issue in this case.

In addition to the three-year statute of limitations, North Carolina law also includes a separate time limit, which North Carolina courts characterize as a statute of repose, providing that "no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. § 1-52(16). That provision is a substantive one that extinguishes a cause of action based on when the defendant's last act or omission occurred, regardless of whether any plaintiff was injured at that time. *Black* v. *Littlejohn*, 325 S.E.2d 469, 474-475 (N.C. 1985). This case presents the question whether this North Carolina statute applies to extinguish the claims at issue here, or whether the statute is instead modified by federal law in a way that would render the claims timely.

b. In 1980, Congress enacted CERCLA to address releases and threatened releases of hazardous substances. CERCLA authorizes entities, including the federal government, to perform cleanup operations and then recover the costs from responsible parties. *United States* v. *Bestfoods*, 524 U.S. 51, 55 (1998). The statute thus creates a federal cause of action for governmental and private parties seeking to recover cleanup costs. 42 U.S.C. 9604, 9607, and 9613. It does not, however, create a federal cause of action for personal injuries or property damage. Instead, CERCLA as originally enacted directed preparation of an expert report to assess "the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the re-

lease of hazardous substances into the environment." 42 U.S.C. 9651(e)(1).

The resulting report recommended the creation of a new federal administrative remedy for persons harmed by exposure to hazardous substances, as well as several changes to state tort law to facilitate recovery in cases involving hazardous substances. *Injuries and Damages from Hazardous Wastes—Analysis and Improvement of Legal Remedies: A Report to Congress in Compliance with § 301(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) by the "Superfund Section 301(e) Study Group,"* S. Comm. on Env't and Pub. Works, 97th Cong., 2d sess. Pt. 1, at 178-251 (Comm. Print 1982) (*Study Group Report*); see *id.* at 252 (recommending that proposed reforms for personal injury actions also extend to claims involving "environmental damage to private property").

The *Study Group Report* recommended (at 240) a number of changes to state tort law that it viewed as necessary to "remove unreasonable procedural and other barriers to recovery in court action for personal injuries resulting from exposure to hazardous waste." The report recommended that States "adopt liberal joinder rules" because "the complex nature of hazardous waste litigation makes it important that the combination of a number of plaintiffs in one lawsuit be encouraged." *Id.* at 241, 242. The Study Group determined that the absence of such liberal joinder rules "in effect denies a plaintiff the opportunity to bring the action at all, unless his claim is exceptionally large." *Id.* at 242.

The *Study Group Report* also recommended (at 243) that States "revise their substantive and proce-

dural rules so as to hold contributors to injury or damage jointly and severally liable" and consider "alternative approaches to apportionment," such as one used "in third party nuclear liability in western Europe." Without such reforms, the Study Group warned, "[s]ubstantive and procedural rules that require * * * specific allocation will defeat the plaintiff's claim." *Ibid.*

Because of the "difficult" nature of causation questions in this area, the *Study Group Report* also recommended (at 245) that the States "develop and enhance causes of action that apply strict liability to the generation, transportation and disposal of hazardous wastes." The Study Group expressed concern that, without such reforms, continued application of ordinary negligence principles would impose "significant barriers to the recovery of damages for injuries from exposure to hazardous waste." *Ibid.*

The *Study Group Report* also made recommendations (at 240-241) regarding time limits for bringing claims involving hazardous substances. The report observed that, with respect to statutes of limitations, a "small number of states still follow the so-called traditional rule that the cause of action accrues from the time of exposure" and that "[a]nother small number of states has not yet clearly" addressed the question whether the traditional rule should apply. *Id.* at 240. Because of long latency periods from harm by hazardous substances, the Study Group expressed concern that, in those States that followed the traditional rule, "the cause of action will usually be time barred when the plaintiff discovers his hurt." *Id.* at 240-241. The group therefore "recommend[ed] that all states that have not already done so, clearly adopt the rule that

an action accrues when the plaintiff discovers or should have discovered the injury or disease and its cause." *Id.* at 241. In addition, the Study Group separately suggested "repeal of the statutes of repose which, in a number of states have the same effect as some statutes of limitations in barring plaintiff's claim before he knows that he has one." *Ibid.*

When Congress amended CERCLA in 1986, it acted on only one of the Study Group's many recommendations: that involving the discovery rule for state statutes of limitations. Congress did not create a federal administrative remedy, preempt state joinder laws, modify state rules of joint and several liability, or establish a regime of strict liability for tort actions. Pet. App. 34a (Thacker, J., dissenting). Instead, in a provision titled "State Procedural Reform," Pub. L. No. 99-499, § 203, 100 Stat. 1695 (capitalization altered), Congress "provide[d] for a Federal commencement date for State statutes of limitations which are applicable to harm which results from exposure to a hazardous substance." H.R. Conf. Rep. No. 962, 99th Cong., 2d Sess. 261 (1986).

Specifically, Congress adopted a limited preemption of "the applicable [state-law] limitations period," which is defined to mean "the period specified in a [state] statute of limitations during which a civil action [relating to exposure to hazardous substances] may be brought." 42 U.S.C. 9658(a)(1) and (b)(2). Congress established that these statutes of limitations cannot begin to run before the "federally required commencement date," which is the date on which plaintiffs "knew (or reasonably should have known)" that their injuries "were caused or contributed to by the hazardous substance or pollutant or contaminant

concerned" (with a more generous rule for minors or persons who are incompetent). 42 U.S.C. 9658(a)(1) and (b)(4).

2. This case concerns property in North Carolina that formerly housed a plant for the manufacturing and disposal of electronics. Pet. App. 7a. The plant was run by petitioner and its corporate predecessor until 1985. *Id.* at 7a & n.3. In 1987, petitioner sold the property to Mills Gap Road Associates. *Id.* at 7a. Mills Gap eventually sold portions of the property to individuals. *Id.* at 8a. The respondents in this case, who were plaintiffs in the district court, are purchasers of the property and adjacent landowners. *Ibid.* In 2009, according to the complaint, two of the respondents learned from the Environmental Protection Agency (EPA) that their well water was contaminated. *Id.* at 55a (Compl. para. 34). Respondents allege that the water was contaminated while petitioner was running its plant. *Id.* at 55a-56a (Compl. paras. 30-38).[1]

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[1] In 2012, the EPA added the property at issue here to the CERCLA National Priorities List (NPL). 77 Fed. Reg. 15,276, 15,280 (Mar. 15, 2012). The NPL "is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States" and "is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants." *Id.* at 15,277 (citing 42 U.S.C. 9605(a)(8)(B)). The NPL "does not assign liability to any party or to the owner of any specific property," and a parcel's inclusion on the list "does not mean that any remedial or removal action necessarily need be taken." *Id.* at 15,278. Petitioner has filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit challenging addition

Respondents instituted this state-law nuisance action against petitioner in 2011. Pet. App. 9a. They seek "reclamation" of "toxic chemical contaminants belonging to [petitioner], remediation of the environmental harm caused" by the chemicals, and "monetary damages in an amount that will fully compensate them for all the losses and damages they have suffered, * * * and will suffer in the future." *Id.* at 57a.

Given that petitioner sold the property 24 years before respondents filed suit, petitioner moved to dismiss the claim based on the North Carolina statute, discussed above, which states that "no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. § 1-52(16); see Pet. App. 9a. Respondents do not contest that, by its terms, the North Carolina statute of repose would bar this suit. Instead, respondents urge that the statute of repose is preempted by 42 U.S.C. 9658. See Pet. App. 9a, 44a.

Accepting the recommendation of a magistrate judge, the district court granted petitioner's motion to dismiss. Pet. App. 37a-39a; see *id.* at 46a (magistrate's determination that Section 9658 does not preempt North Carolina's "substantive" ten-year limitation).

3. In a divided decision, the court of appeals reversed. Pet. App. 1a-36a.

a. The panel majority acknowledged the distinctions between statutes of limitations and statutes of repose. Pet. App. 9a-11a. A statute of limitations, it explained, operates to "encourag[e] prompt resolution of disputes by providing a simple procedural mecha-

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of the property to the NPL. See *CTS Corp.* v. *EPA*, No. 12-1256 (oral argument scheduled for Apr. 10, 2014).

nism to dispose of stale claims." *Id.* at 10a (quoting *First United Methodist Church* v. *U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989), cert. denied, 493 U.S. 1070 (1990)). "In contrast, a statute of repose 'bar[s] any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered the resulting injury.'" *Ibid.* (quoting *Black's Law Dictionary* 1546 (9th ed. 2009)) (alterations in original). The court also explained that statutes of limitations are procedural in nature, while statutes of repose are "substantive grants of immunity based on a legislative balance of the respective rights of potential plaintiffs and defendants," and that, with respect to statutes of repose, "'considerations of the economic best interests of the public as a whole' are at play." *Ibid.* (quoting *First United Methodist Church*, 882 F.2d at 866).

The panel majority recognized that the ten-year period at issue in this case "bars lawsuits 'brought after a specified time since the defendant acted,' without regard for the plaintiff's knowledge of his harm." Pet. App. 10a (quoting *Black's Law Dictionary* 1546). The court thus acknowledged that the provision is properly classified as a statute of repose. *Ibid.*

The majority concluded that Section 9658 is "ambiguous" as to whether it preempts statutes of repose, or operates only on statutes of limitations. Pet. App. 11a. The court noted that the federal statute repeatedly refers to statutes of limitations, but never refers to statutes of repose. *Id.* at 11a-12a. The court thus concluded that the language "could reasonably lead to a conclusion that its application is limited only to statutes of limitations." *Id.* at 12a.

The court, however, then discussed "an alternate reading" of the provision that would also encompass statutes of repose. Pet. App. 12a. It relied on the fact that the North Carolina statute of repose "is located with the statutes of limitations" in the North Carolina statute book, *ibid.*; that, in the court's view, the North Carolina statute of repose falls within the scope of the federal statute because it is "(1) a 'period,' (2) 'specified in a statute of limitations,' (3) 'during which a civil action . . . may be brought'" and thus "comports with the definition of 'applicable limitations period,'" *ibid.* (quoting 42 U.S.C. 9658(b)(2)); and that the statute of repose's "commencement date . . . is earlier than the federally required commencement date," *id.* at 12a-13a (quoting 42 U.S.C. 9658(a)(1)).

Having determined that the text of Section 9658 is ambiguous, the court of appeals concluded that it was required to adopt a "liberal construction" because CERCLA is a "remedial statute[]." Pet. App. 15a (internal quotation marks omitted). The court accordingly held "that the federally required commencement date in [Section] 9658 preempts North Carolina's ten-year limitation on the accrual of real property claims." *Id.* at 16a.

b. Judge Thacker dissented. Pet. App. 19a-36a. The dissent noted that statutes of limitations are procedural devices designed to limit remedies while statutes of repose are substantive provisions. *Id.* at 22a-23a. The two types of provisions, the dissent observed, also operate differently: "Statutes of limitations typically begin to run either on the date of the plaintiff's injury, or on the date the injury is first discovered or should have been discovered with reasonable diligence," *id.* at 22a, while "[s]tatutes of re-

pose typically begin to run after 'the occurrence of some event other than the injury which gave rise to the claim,'" *id.* at 23a (quoting *McDonald* v. *Sun Oil Co.*, 548 F.3d 774, 779 (9th Cir. 2008), cert. denied, 557 U.S. 919 (2009)).

The dissent noted that North Carolina law creates both a three-year statute of limitations and a ten-year statute of repose. Pet. App. 26a-27a. "But only the three-year provision specifies a time period to bring a cause of action *after* the right has accrued by operation of the discovery rule." *Id.* at 27a. By contrast, "[t]he 10-year provision specifies a time restriction *regardless* of whether the right to bring the cause of action could have otherwise accrued." *Ibid.*

The dissent also noted that, textually, "any application [of Section 9658] to North Carolina's statute of repose is untenable." Pet. App. 28a. The federal statute is triggered if "the state 'commencement date' [is] 'earlier than the federally required commencement date,'" *ibid.* (quoting 42 U.S.C. 9658(a)(1)), and "the commencement date is defined as the *beginning* of the period in which a civil action may be brought," *id.* at 28a-29a (citing 42 U.S.C. 9658(b)(2)-(3)). "But the North Carolina statute of repose does not provide a beginning or 'commencement date' as that term is defined. Rather, it provides an outer limit, after which no cause of action may accrue." *Id.* at 29a. Accordingly, the dissent determined, Section 9658 "cannot graft neatly—or at all—onto the North Carolina statute of repose so as to preempt its enforcement." *Ibid.*

SUMMARY OF ARGUMENT

CERCLA's uniform federal discovery rule that triggers the start of state statute of limitations periods in tort suits involving hazardous substances has no effect on North Carolina's statute of repose.

A. The federal statute at issue here, 42 U.S.C. 9658, requires use of a discovery rule for statutes of limitations applicable to state tort cases involving exposure to hazardous substances. Thus, the period within which a cause of action may be brought does not begin to run before the plaintiff has had an opportunity to discover the injury and its connection to hazardous substances.

North Carolina has a three-year statute of limitations, and, under state law, that three-year period does not begin to run until the plaintiff has discovered the injury. Here, the discovery of the injury also revealed that the injury was caused by hazardous substances. Thus, without reference to CERCLA, the applicable limitations period did not begin to run here until respondents discovered that their land had been exposed to hazardous substances. The federal statute, which applies only when a State's applicable limitations period begins to run earlier than the date on which the plaintiff discovers the injury and its cause, thus has no application in this case.

The court of appeals mistakenly concluded that Section 9658 preempts North Carolina's statute of repose, which eliminates causes of action once ten years have elapsed after the defendant's last act or omission. Section 9658 applies only to "the applicable limitations period," which it defines as the "period specified in a statute of limitations during which a civil action * * * may be brought." 42 U.S.C.

9658(b)(2). North Carolina's statute of repose does not establish such a period. It begins to run on the date of the defendant's last relevant act or omission and without any consideration of the time of any injury to the plaintiff or the accrual of his cause of action. It is thus not the applicable period when a civil action "may be brought," *ibid.*, and is unaffected by Section 9658.

Had Congress intended to preempt state statutes of repose, it would not have done so by referring to the "period specified in a statute of limitations during which a civil action * * * may be brought." 42 U.S.C. 9658(b)(2). Moreover, adopting a uniform federal discovery rule (as is done in Section 9658) would not have been a sensible means to achieve the goal of displacing all other time periods, whether characterized as statutes of limitations or statutes of repose. Discovery rules are common in ordinary statutes of limitations, so Congress's choice to adopt a federal discovery rule in that context was not surprising. But discovery rules and statutes of repose are fundamentally inconsistent, and there is no reason to believe that Congress intended the novel step of forcing an awkward combination of the two.

B. The statutory context of Section 9658's enactment likewise supports the conclusion that it does not affect state statutes of repose. Congress legislated in response to a report suggesting *both* that States adopt a discovery rule for statutes of limitations and that they repeal their statutes of repose. Congress was thus expressly made aware that adoption of a discovery rule would not affect the operation of statutes of repose. Yet it decided to enact only a federally re-

quired discovery rule, and took no action with respect to state statutes of repose.

In making that distinction, Congress hewed to a recognized line between statutes of limitations, which are considered procedural, and statutes of repose, which are substantive limits on liability. The distinction is reflected in choice of law principles—under which a court follows the forum State's statute of limitations but a statute of repose from the State whose substantive law governs—and the FTCA—which has a federal statute of limitations but does not preempt state statutes of repose. Congress reasonably followed the same approach here, making only a tailored alteration to the States' procedural law related to tort actions involving hazardous substances, but not altering the substance of those actions.

C. Even if Section 9658 were considered unclear on the question whether it applies to a statute of repose, its structure and purpose suggest it should be construed against preemption on a matter of traditional state authority. The court of appeals ignored that principle, even though it thought the statute ambiguous. Instead, the court mistakenly relied on the canon that remedial statutes like CERCLA must be construed liberally.

The purpose of CERCLA is to promote cleanup of hazardous substances and to require responsible parties to bear the costs of that cleanup, not to advantage tort plaintiffs in all respects. Indeed, when Congress adopted Section 9658, it declined to adopt many measures that had been proposed to strengthen tort plaintiffs' ability to recover damages based on exposure to hazardous substances. In particular, Congress declined to create a new federal administrative reme-

dy, and it rejected all proposals to enact substantive changes to state tort law. Instead, Congress supplanted state procedural law in one narrow respect. That limited preemption should not be read to override States' separate substantive determinations, such as those embodied in statutes of repose, regarding the content of state-law causes of action.

ARGUMENT

THE FEDERAL DISCOVERY RULE IN SECTION 9658 HAS NO EFFECT ON NORTH CAROLINA'S STATUTE OF REPOSE

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, alters a State's statute of limitations governing state-law tort actions involving hazardous substances in one limited respect: It establishes a federal discovery rule for the commencement of the limitations period and requires its use if state law would provide for an earlier commencement date. That provision has no application to North Carolina's statute of repose, a substantive limit on liability determined exclusively by reference to the defendant's actions, not plaintiff's injury or ability to bring suit.

A. The Text And Structure Of Section 9658 Make Clear That It Has No Application To The Ten-Year Period At Issue Here

1. CERCLA creates an "[e]xception" to the commencement date of state statutes of limitations as applied to state-law suits involving hazardous substances. 42 U.S.C. 9658(a)(1). Its operative provision directs that

> if the applicable limitations period for such action (as specified in the State statute of limita-

> tions or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

Ibid. "[T]he statute of limitations established under State law shall apply" in all other respects. 42 U.S.C. 9658(a)(2).

The provision goes on to define the terms used in the exception it creates to operation of state statutes of limitations. See 42 U.S.C. 9658(b). It defines "the applicable limitations period" as "the period specified in a statute of limitations during which a civil action [relating to exposure to hazardous substances] may be brought." 42 U.S.C. 9658(b)(2). It defines "commencement date" as "the date specified in a statute of limitations as the beginning of the applicable limitations period." 42 U.S.C. 9658(b)(3). And it provides that the "federally required commencement date" generally means "the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages * * * were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." 42 U.S.C. 9658(b)(4)(A).

Whether Section 9658(a)(1) applies in a given case turns on a comparison between the beginning of the period when a civil action "may be brought" under state law and the "federally required commencement date," 42 U.S.C. 9658(a)(1), (b)(2) and (3). If state law provides that such a period begins to run before the date the plaintiff knew (or reasonably should have known) that the property damage was caused by a hazardous substance, the federal commencement date

displaces state law. 42 U.S.C. 9658(b)(2), (3) and (4)(A). State law continues to govern in all other respects. 42 U.S.C. 9658(a)(2).

Under North Carolina law, a three-year statute of limitations specifies the period during which a civil action may be brought. N.C. Gen. Stat. § 1-52(16); see *id.* § 1-15(a) ("Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued."). That three-year period does not begin to run until "damage to [the plaintiff's] property becomes apparent or ought reasonably to have become apparent." *Id.* § 1-52(16). There is no dispute that North Carolina's three-year statute of limitations satisfies the definition of "the applicable limitations period" established by Section 9658. 42 U.S.C. 9658(a)(1). It is a "period specified in a statute of limitations during which a civil action [relating to exposure to hazardous substances] may be brought." 42 U.S.C. 9658(b)(2); see N.C. Gen. Stat. § 1-15(a).

Because North Carolina's three-year statute of limitations does not begin to run until "damage to [the plaintiff's] property becomes apparent or ought reasonably to have become apparent," N.C. Gen. Stat. § 1-52(16), the state-law commencement date here is the date respondents discovered that their wells were contaminated. The federal commencement date in this case would be the same: When respondents discovered the contamination, they also "knew * * * [that] the property damages * * * were caused * * * by the hazardous substance," 42 U.S.C. 9658(b)(4)(A). See Pet. App. 55a (Compl. para. 34). Accordingly, Section 9658, which applies only when "the applicable [state] limitations period * * *

provides a commencement date which is earlier than the federally required commencement date," 42 U.S.C. 9658(a)(1), has no application to North Carolina's three-year statute of limitations as applied here.[2]

2. The court of appeals believed that Section 9658 was "ambiguous" on the question whether it preempted North Carolina's ten-year statute of repose, and the court ultimately answered that question affirmatively. Pet. App. 11a; see *id.* at 14a-16a. The court was incorrect in its finding of ambiguity and in its ultimate conclusion.

a. As noted above, Congress defined "the applicable limitations period" relevant to Section 9658 as the "period specified in a statute of limitations during which a civil action * * * may be brought," 42 U.S.C. 9658(b)(2), and the "commencement date" as the start of that period, 42 U.S.C. 9658(b)(3). Section 9658 thus addresses the starting point of the period during which "the plaintiff can file suit and obtain relief," *i.e.*, the point at which he first has "a complete

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[2] Under different circumstances, the commencement date for the North Carolina statute of limitations might be superseded by Section 9658. North Carolina law incorporates a traditional discovery rule, providing that the statute of limitations period begins to run when "bodily harm" or "physical damage * * * becomes apparent or ought reasonably to have become apparent." N.C. Gen. Stat. § 1-52(16). By contrast, the federal provision includes an "enhanced discovery rule" (Pet. App. 21a & n.1 (Thacker, J., dissenting)) because it adds an element involving knowledge of causation: the federal commencement date is the point at which "the plaintiff knew (or reasonably should have known) that the personal injury or property damages * * * were caused or contributed to by the hazardous substance." 42 U.S.C. 9658(b)(4)(A). This difference between the two discovery rules is not implicated here.

and present cause of action." *Bay Area Laundry & Dry Cleaning Pension Trust Fund* v. *Ferbar Corp.*, 522 U.S. 192, 201 (1997) (*Bay Area Laundry*) (citation omitted).

The statute of repose in N.C. Gen. Stat. § 1-52(16) is not that period. The ten-year period commences on the date of "the last act or omission of the defendant giving rise to the cause of action," *ibid.*, regardless whether the cause of action actually exists at that time. *McDonald* v. *Sun Oil Co.*, 548 F.3d 774, 780 (9th Cir. 2008) (A statute of repose "does not require injury before it operates."), cert. denied, 557 U.S. 919 (2009). The ten-year period thus runs without any reference to when a plaintiff's action may be filed: A defendant's last act or omission may precede the plaintiff's injury, and a plaintiff typically may not initiate a civil action before suffering an injury. *Bay Area Laundry*, 522 U.S. at 200-201 (contention that an ordinary statute of "limitations period commences at a time when the [plaintiff] could not yet file suit" is "inconsistent with basic limitations principles"); see *Graham Cnty. Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U.S. 409, 418-419 (2005) (discussing "the default rule that Congress generally drafts statutes of limitations to begin when the cause of action accrues"); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 30, at 165 (5th ed. 1984) (*Prosser and Keeton*) ("It follows that the statute of limitations is generally held not to begin to run against a negligence action until some damage has occurred."); see also *Heimeshoff* v. *Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 610-611 (2013) (discussing default rule but noting that Congress can make exceptions to it).

North Carolina courts have interpreted provisions like the ten-year limit in N.C. Gen. Stat. § 1-52(16) as "unyielding and absolute barrier[s] that prevent[] a plaintiff's right of action even before his cause of action may accrue, which is generally recognized as the point in time when the elements necessary for a legal wrong coalesce." *Black* v. *Littlejohn*, 325 S.E.2d 469, 475 (N.C. 1985). Such a provision, which the North Carolina Supreme Court has termed a "period of repose," *id.* at 474, is thus not a "period * * * during which a civil action * * * may be brought." 42 U.S.C. 9658(b)(2); see Pet. App. 29a (Thacker, J., dissenting) (Section 9658 "cannot graft neatly—or at all—onto the North Carolina statute of repose," which "does not provide a beginning or 'commencement date' as that term is defined."). It is accordingly not an "applicable limitations period" (42 U.S.C. 9658(a)(1)) affected by Section 9658.

In this case, for example, the complaint alleges that respondents first learned of the contamination in 2009, Pet. App 55a (Compl. para. 34), and they filed suit in 2011, *id.* at 9a. Because North Carolina has a discovery rule, respondents' action was timely filed under the three-year statute of limitations. The barrier to respondents' cause of action is not the commencement date of the period during which a civil action could be brought—the matter addressed by 42 U.S.C. 9658. Instead, it is the operation of the statute of repose that substantively extinguished their cause of action.

b. The court of appeals did not explain how the ten-year period in the statute of repose could be understood as the period during which a civil action could be brought for purposes of Section 9658. Instead, the court simply stated that the statute of re-

pose was categorically "preempted." Pet. App. 18a. That approach was misconceived.

Congress did not "preempt" any state time limitations in their entirety, but rather *modified* certain state limitations periods by prohibiting them from beginning to run until the plaintiff could discover both the injury and its cause. That choice makes perfect sense in the context of ordinary state statutes of limitations, most of which already embodied discovery rules in one form or another at the time Congress enacted Section 9658. *Study Group Report*, Pt. 2, at B-1; *Prosser and Keeton* § 30, at 166-167. Congress's limited intent was thus to address tort claims in those States that had not adopted the majority rule, and to ensure that all States had a discovery rule that delayed accrual not only until the discovery of the injury, but also until the connection to hazardous substances could reasonably have been discovered, see n.2, *supra*.

By contrast, if Congress intended also to preempt state statutes of repose, which can begin to run before a plaintiff is even injured, it would not have sensibly done so by layering a discovery rule on top of those provisions. Repose periods are usually much longer than traditional limitations periods—here, ten years as opposed to three—and a discovery rule would render them entirely redundant with the shorter period. Indeed, a statute of repose triggered by a plaintiff's discovery of his injury would not be a statute of repose at all; by its nature, the period begins to run based on the defendant's actions alone.

This Court's discussion in *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350 (1991) (*Lampf*), of the limitations periods under the securi-

ties laws is illustrative of this point. As a general matter, those limitations periods are "one year after discovery and * * * three years after violation." *Id.* at 355 n.2. The Court in *Lampf* declined to apply "the doctrine of equitable tolling" to the three-year period, explaining that such tolling is "fundamentally inconsistent" with the purpose of that provision to "impose an outside limit" on substantive liability and to "serve as a cutoff." *Id.* at 363 (citation omitted). Imposing a discovery rule on a state statute of repose would be "fundamentally inconsistent" (*ibid.*) with such a time limit for the same reason.

c. Given these textual manifestations of Congress's limited intent, Section 9658 contrasts markedly with other statutes in which Congress chose to override *all* otherwise applicable time limitations.

In one set of such statutes, Congress created a new, exclusive time limitation applicable to claims brought by specified federal agencies as conservator, receiver, or liquidating agent for failed financial institutions. Courts of appeals have correctly construed such limitations periods to apply to the exclusion of any other time limitation that might otherwise apply. See *National Credit Union Admin. Bd.* v. *Nomura Home Equity Loan, Inc.*, 727 F.3d 1246, 1254-1267 (10th Cir. 2013) (construing 12 U.S.C. 1787(b)(14)), petition for cert. pending, No. 13-576 (filed Nov. 8, 2013); *Federal Hous. Fin. Agency* v. *UBS Ams. Inc.*, 712 F.3d 136, 141-144 (2d Cir.) (construing 12 U.S.C. 4617(b)(12)), motion for leave to intervene and file a pet. for writ of cert. denied, 134 S. Ct. 372 (2013); see also *Beckley Capital Ltd. P'ship* v. *DiGeronimo*, 184 F.3d 52, 57 (1st Cir. 1999) (construing 12 U.S.C. 1821(d)(14)). The text, context, and history of those

provisions make clear that Congress intended an exclusive, uniform time limitation to apply to actions brought by the designated federal agencies. *E.g.*, *UBS Ams.*, 712 F.3d at 141 (noting that 12 U.S.C. 4617(b)(12) "sets forth '*the* applicable statute of limitations with regard to *any* action brought by [FHFA] as conservator or receiver'") (quoting 12 U.S.C. 4617(b)(12)(A) (emphasis and alteration in original).

Here, by contrast, Congress did not enact a new time limitation to supersede all others. Instead, Congress altered particular preexisting state statutes of limitations in only one limited respect—by changing the date on which the cause of action accrued. Congress otherwise left time limitations unchanged, explicitly stating that those time limitations continue to apply "[e]xcept" to the extent that they are specifically superseded by federal law. 42 U.S.C. 9658(a)(2).

3. The court of appeals thought it significant that the term "statute of limitations," which repeatedly appears in 42 U.S.C. 9658, has been used in some contexts to refer to provisions that contain time limitations that may be described as statutes of repose. Pet. App. 13a. The Securities Act, for example, contains a provision that precludes lawsuits brought more than one year after the violation could reasonably have been discovered, or more than three years after the violation, 15 U.S.C. 77m; see pp. 21-22, *supra*, and this Court has described this provision in its entirety as a "statute of limitations." *E.g.*, *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 210 (1976); see Pet. App. 12a (noting that the ten-year period at issue here appears in a state enactment, N.C. Gen. Stat. § 1-52(16), that may be described as a statute of limitations).

But the term "statute of limitations" has also been used in a more precise sense, to describe only those time limitations that bar "causes of action * * * unless brought within a specified period of time after the right accrued." *Black's Law Dictionary* 835 (5th ed. 1979), quoted in Pet. App. 24a-25a; see Francis E. McGovern, *The Variety, Policy and Constitutionality of Product Liability Statutes of Repose*, 30 Am. U.L. Rev. 579, 584 (1981) (describing statutes of repose as "distinct from a statute of limitation because [they] begin[] to run at a time unrelated to the traditional accrual of the cause of action"); *Bolick* v. *American Barmag Corp.*, 293 S.E.2d 415, 419 n.4 (N.C. 1982) ("Because [the statute] attempts to bar absolutely claims * * * after a period measured from a date *other than* the date of accrual of those claims, it does not constitute a statute of limitation.") (internal quotation marks omitted).

In the context of Section 9658, the only purpose of which is to alter the date on which causes of action first accrue, the term "statute of limitations" is most naturally read to mean a time limitation that precludes actions that are not "brought within a specified period of time after the right accrued." *Black's Law Dictionary* 835. But regardless of whether the term "statute of limitations" is given a broad or narrow reading, as discussed above, the mechanism by which 42 U.S.C. 9658 operates has no effect on the ten-year period at issue in this case.[3]

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[3] The use of the term "statute of limitations" likewise did not control the outcome in the cases in which Congress created a new, exclusive time limitation applicable to particular categories of claims. See pp. 22-23, *supra*. In that context, the term "statute of limitations" "refers to the time limits in [the new timing provision]

B. The Statutory Context Confirms That Congress Meant Only To Create A Discovery Rule And Not To Preempt Statutes Of Repose

Although the text and structure of Section 9658 answer the question presented in this case, the larger statutory context reinforces that conclusion.

1. The *Study Group Report* that preceded Congress's enactment of Section 9658 drew a distinction between altering the accrual date of a statute of limitations and eliminating a statute of repose. That report recommended "that all states that have not already done so, clearly adopt the rule that an action accrues when the plaintiff discovers or should have discovered the injury or disease and its cause." *Study Group Report* 241. Rather than waiting for States to act, Congress in Section 9658 responded to that recommendation by prohibiting state-law actions from accruing, for statute-of-limitations purposes, before "the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages * * * were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." 42 U.S.C. 9658(b)(4)(A).

The *Study Group Report* also recommended (at 241) "the repeal of the statutes of repose, which, in a number of states have the same effect as some statutes of limitation in barring plaintiff's claim before he knows that he has one." The Study Group's separate suggestion to *repeal* statutes of repose was necessary because the creation of a discovery rule of accrual would not itself affect the operation of such statutes.

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itself * * * not the time limits in other statutes that [the provision] replaces," and it supplants all other limitations periods. *Nomura*, 727 F.3d at 1257.

Congress took no action based on that recommendation concerning statutes of repose.

The Study Group's analysis of the North Carolina law at issue here confirms the distinction that was before Congress at the time it enacted Section 9658. An appendix to its report separated the States into four categories: (1) those "that have adopted the discovery rule by statute"; (2) those "that have achieved a similar result by case law interpretation"; (3) those that "have rejected the discovery rule"; and (4) those that "have not clearly committed themselves to either rule." *Study Group Report*, Pt. 2 at B-6.[4] The report placed North Carolina in the first category, recognizing that the State had already adopted a "discovery rule." *Id.* at B-9 to B-10; see *id.* at B-3 to B-4 (discussing North Carolina's formulation of the discovery rule); see also *id.* at B-63; *Study Group Report* 29.

The report also noted that North Carolina had a statute of repose. *Study Group Report*, Pt. 2, at B-9 to B-10, B-63. But the existence of the statute of repose did not cause the report's authors to put North Carolina in a different category or otherwise distinguish the State from other jurisdictions that had already adopted discovery rules for their statutes of limitations. The appendix thus confirms, in the specific context of the North Carolina statute at issue in this case, the point made elsewhere in the *Study Group*

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[4] The fact that discovery rules were sometimes created by "case law interpretation" explains the reference in 42 U.S.C. 9658 to limitations periods specified by "common law." 42 U.S.C. 9658(a)(1). Contrary to the panel majority's reasoning, Pet. App. 13a-14a, neither Congress's reference to common law in the operative provision of 42 U.S.C. 9658 nor its decision not to repeat the phrase in the definitional sections creates any ambiguity relevant to this case.

Report: Even if a State had a discovery rule (whether imposed by state law or superseding federal law), additional action would be needed to repeal the State's statute of repose. Congress took no such action.

2. Because "[t]he distinction between statutes of limitations and statutes of repose corresponds to the distinction between procedural and substantive laws," *Goad* v. *Celotex Corp.*, 831 F.2d 508, 511 (4th Cir. 1987), cert. denied, 487 U.S. 1218 (1988), it is unsurprising that Congress drew a line between them when deciding how much state law to preempt. As reflected in the title of the amendment, Congress decided to adopt only a limited "procedural reform," Pub. L. No. 99-499, § 203, 100 Stat. 1695 (capitalization altered), while leaving to the States the substantive question of whether a given plaintiff would be able to recover.

As the North Carolina Supreme Court has explained, "[o]rdinary statutes of limitations are clearly procedural, affecting only the remedy directly and not the right to recover." *Boudreau* v. *Baughman*, 368 S.E.2d 849, 857 (1988). "The statute of repose, on the other hand, acts as a condition precedent to the action itself." *Ibid.* "Unlike a limitation provision which merely makes a claim unenforceable, a condition precedent establishes a time period in which suit must be brought in order for the cause of action to be recognized." *Ibid.* For those reasons, the statute of repose is "a substantive definition of rights rather than a procedural limitation on the remedy used to enforce rights." *Ibid.*; see Pet. App. 10a.

In drawing this same distinction in Section 9658, Congress followed a familiar approach also used in other areas of law. Under traditional choice-of-law rules, for example, state courts routinely apply their

own statutes of limitations to claims arising under the laws of other States. See *Sun Oil Co.* v. *Wortman*, 486 U.S. 717, 722 (1988) (noting that "[t]his Court has long and repeatedly held that the Constitution does not bar application of the forum State's statute of limitations to claims that in their substance are and must be governed by the law of a different state"); 63B Am. Jur. 2d *Products Liability* § 1417 (2010). At the same time, however, a state court generally applies the statute of repose of the State whose law provides the substantive rule of decision in a case. *E.g.*, *Boudreau*, 368 S.E.2d at 857 (adopting that rule and noting that the "overwhelming weight of authority in other jurisdictions accepts the characterization of statutes of repose as substantive provisions in a choice of law context"); *Wayne* v. *Tennessee Valley Auth.*, 730 F.2d 392, 400-402 (5th Cir. 1984), cert. denied, 469 U.S. 1159 (1985); Restatement (Second) of Conflict of Laws § 143 (1971); *Products Liability* § 1418. That is because statutes of limitations, as procedural rules, "express the public policy of the forum State in granting or denying access to its courts." *Goad*, 831 F.2d at 511. Statutes of repose, by contrast, are substantive laws that "reflect a State's determination of the proper relationship between the people and property within its boundaries." *Ibid.*

Likewise, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, draws a distinction between a statute of limitations and a statute of repose. *Anderson* v. *United States*, 669 F.3d 161, 164-165 (4th Cir. 2011). The FTCA establishes a generally applicable federal statute of limitations, requiring claims to be "presented in writing to the appropriate Federal agency within two years after such claim accrues." 28 U.S.C. 2401(b).

By contrast, because the *substantive* restrictions on liability under state law apply to FTCA actions against the United States, 28 U.S.C. 1346(b), 2674, a State's statute of repose applies in such actions and is not preempted by the FTCA. *Anderson*, 669 F.3d at 164-165 ("Because statutes of repose are substantive limitations on liability, an FTCA claim does not lie against the United States where a statute of repose would bar the action if brought against a private person in state court."); see *Augutis* v. *United States*, 732 F.3d 749, 753-754 (7th Cir. 2013); see also *Huddleston* v. *United States*, 485 Fed. Appx. 744, 746 (6th Cir. 2012), cert. denied, 133 S. Ct. 859 (2013); *Smith* v. *United States*, 430 Fed. Appx. 246, 247 (5th Cir. 2011). But see, *e.g.*, *Jones* v. *United States*, 789 F. Supp. 2d 883, 892 (M.D. Tenn. 2011).

C. Other Features Of The Statute Confirm That Section 9658 Does Not Preempt Statutes Of Repose

Even if Section 9658 were thought to be ambiguous, the statute should not be interpreted to preempt the ten-year limitation at issue here. In various contexts, this Court has assumed "that the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." *Altria Grp., Inc.* v. *Good*, 555 U.S. 70, 77 (2008) (citation omitted) (first set of brackets in original). "[T]he ability of a state to create a substantive right to be free from liability under its own state tort law is unquestionably a traditional field of state regulation." Pet. App. 35a (Thacker, J., dissenting).

Regardless of how that assumption might apply in other contexts, here Section 9658 itself embodies essentially the same principle. See generally *Chad-*

bourne & Parke LLP v. *Troice*, No. 12-79, Slip op. 13-14 (Feb. 26, 2014) (construing statute not to preempt state law in light of other provisions showing that Congress had "purposefully maintain[ed] state legal authority, especially over matters that are primarily of state concern"). Section 9658 leaves the entire body of state tort law, both procedural and substantive, untouched, except for the commencement date for state statutes of limitations (and, even there, supplants them only if the commencement date is earlier than that provided by federal law). 42 U.S.C. 9658(a)(1). In doing so, Congress expressly emphasized that "[e]xcept" as provided by the federal discovery rule provision, "the statute of limitations established under State law shall apply" in tort actions involving hazardous substances. 42 U.S.C. 9658(a)(2). The careful attention Congress paid to *not* preempting state law, except in one narrow respect, makes it proper to resolve any ambiguity in Section 9658 against preemption.[5]

The panel majority failed entirely to address this principle, even after concluding that the federal statute was "ambiguous," Pet. App. 11a. Instead, the court of appeals resolved the perceived ambiguity in light of its more general view that "Congress's purpose in enacting CERCLA was remedial." *Id.* at 14a. The court's interpretive approach ignores the nature

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[5] By contrast, where a federal agency is a plaintiff acting pursuant to Congressional command, *e.g.*, pp. 22-23, *supra*, any ostensible ambiguity in a statute is resolved by the well-established interpretative rule that "statutes of limitations are construed narrowly against the government," which "is given the benefit of the doubt if the scope of the statute is ambiguous." *BP Am. Prod. Co.* v. *Burton*, 549 U.S. 84, 95-96 (2006).

of the specific provision at issue and the manner in which it fits into the statute as a whole.

The overriding purpose of CERCLA is "to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts [are] borne by those responsible for the contamination." *Burlington N. & Santa Fe Ry. Co.* v. *United States*, 556 U.S. 599, 602 (2009) (internal quotation marks and citation omitted). To that end, "CERCLA imposes strict liability for environmental contamination upon four broad classes of [potentially responsible parties]." *Id.* at 608 (citing 42 U.S.C. 9607(a)). "Once an entity is identified as [a potentially responsible party], it may be compelled to clean up a contaminated area or reimburse the Government for its past and future response costs." *Id.* at 609. CERCLA provides a further incentive for entities to assume responsibility by prohibiting responsible parties from seeking contribution from other entities that have settled their liability with a State or with the federal government. 42 U.S.C. 9613(f)(2).

It is well established that CERCLA is a remedial statute in its various provisions for the cleanup of sites contaminated by hazardous substances. *E.g.*, *Niagara Mohawk Power Corp.* v. *Chevron U.S.A., Inc.*, 596 F.3d 112, 120 (2d Cir. 2010) ("CERCLA, remedial in nature, is designed to encourage prompt and effective cleanup of hazardous waste sites."). Indeed, under certain circumstances, CERCLA itself allows private parties that have incurred costs "associated with cleaning up contaminated sites" to "recover expenses" from responsible parties. *United States* v. *Atlantic Research Corp.*, 551 U.S. 128, 131 (2007) (citing 42 U.S.C. 9607(a), 9613(f)); see 42 U.S.C.

9613(g)(2)-(3) (providing periods in which such actions must be commenced); see also 42 U.S.C. 9658(a)(3) (stating that nothing in Section 9658 "shall apply with respect to any cause of action brought under [S]ection 9607").

But it does not follow that helping private plaintiffs to collect tort damages years after the contamination has ended—and after the point at which the state legislature determined as a substantive matter that liability under state law should cease—fits into that same federal remedial focus of the Act. Cf. 131 Cong. Rec. 35,646 (1985) (statement of Rep. Kindness) (opposing creation of federal cause of action under CERCLA for tort damages related to hazardous substances because such a cause of action "ha[d] to do with adjustment of private rights and liabilities and remedies" and was thus "at odds" with purpose of CERCLA "to clean up hazardous waste sites in order to protect the public interest"); 131 Cong. Rec. 35,639 (statement of Rep. Glickman) (explaining that CERCLA's "real purpose * * * is the cleanup of hazardous waste sites" and that a new federal tort remedy would improperly turn CERCLA "into a private compensation program"); 131 Cong Rec. 35,640 (statement of Rep. Fish) ("The purpose of the Superfund law is to provide a Federal response to the urgent need to clean up existing hazardous waste sites. * * * This House has consistently rejected expanding the Superfund statute to deal with legal rights aimed at compensation for damages.").

The conclusion that CERCLA's specific remedial focus on cleanup does not extend to damages recoveries for private tort plaintiffs under state law is underscored by the absence of any provision relevant to

such tort actions in CERCLA as originally enacted in 1980. Instead, Congress commissioned the *Study Group Report* to address the distinct subject of the adequacy of tort remedies for those harmed by hazardous substances. 42 U.S.C. 9651(e). And when Congress later amended CERCLA in response to that report, it acted on only one of the Study Group's recommendations—that involving the discovery rule—while declining to adopt (and thereby implicitly rejecting) all the others, including the elimination of state statutes of repose. See pp. 4-6, *supra* (discussing Congress's failure to adopt a federal administrative scheme or to preempt state law on joinder, joint and several liability, and causation in state tort actions).

Congress opted against adopting the *Study Group Report's* other recommendations, even though that report's authors thought those recommendations (including repeal of statutes of repose) were necessary to "remove unreasonable procedural and other barriers to recovery in court action for personal injuries resulting from exposure to hazardous waste." *Study Group Report* 240; see pp. 4-6, *supra*. That choice demonstrates, as the express preservation of state law in 42 U.S.C. 9658(a)(2) confirms, that Congress's goal was not exclusively to provide remedies for plaintiffs at the expense of all other interests. *Kucana* v. *Holder*, 558 U.S. 233, 252 (2010) ("[N]o law pursues its purpose at all costs, and . . . the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations.") (citation omitted). Instead, Section 9658 represents a careful "balance between harmonizing certain procedural matters in toxic tort cases and allowing states to con-

tinue to regulate in their own substantive areas of law." Pet. App. 34a-35a (Thacker, J., dissenting).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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STATUTORY APPENDIX

1. 42 U.S.C. 9658 provides:

Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section—

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date

The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by

the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

2. N.C. Gen. Stat. § 1-15(a) (2011) provides:

Statute runs from accrual of action.

Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

3. N.C. Gen. Stat. § 1-52(16) (2011) provides in pertinent part:

Three years.

Within three years an action—

* * * * *

Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.